



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Northrop Corporation, Precision Products
Division

File: B-234237

Date: May 3, 1989

DIGEST

Protest challenging agency determination that gyroscopes offered as an alternate to approved source were technically acceptable is denied since agency has primary responsibility for establishing procedures to determine product acceptability and for determining whether item will satisfy government's minimum needs, and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

DECISION

Northrop Corporation, Precision Products Division, protests the Department of the Air Force's award of a contract to Integrated Logistics International (ILI) under request for proposals (RFP) No. F42600-88-R-0355. The contract is for the supply of F-16 aircraft gyroscopes. Northrop argues that ILI has not adequately demonstrated its technical capability as a qualified source to manufacture the devices.

We deny the protest.

On April 29, 1988, ILI received initial approval as a source for the gyroscopes based upon a technical data package submitted by ILI to the Air Force. The Air Force determined that ILI was an acceptable source subject to ILI's furnishing to the Air Force an acceptable first article of the product. An RFP was issued to meet the Air Force's needs for gyros and a contract was awarded on July 14, 1988, to ILI, as the low acceptable offeror. The contract called for ILI to furnish an acceptable first article gyros assembly and 67 gyro production units.

Subsequent to the execution of ILI's contract, an additional need for gyros developed. Consequently, the Air Force issued two separate solicitations, request for proposals No. F42600-88-R-0354 which was issued to Northrop and RFP

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No. F42600-88-R-0355 which was issued to ILI. Both RFPs cross-referenced one another and called for identical quantities of 350 units. In addition, the RFP issued to Northrop provided for an option quantity of an additional 350 units to be awarded in the event that ILI failed to receive first article approval under its basic contract with the Air Force. The Air Force made award of contract No. F42600-88-C-0094 to Northrop for a basic quantity of 350 units plus an option quantity of 350 units. The Air Force issued modification No. P00002 to ILI's earlier contract, which included the first article requirement, for the additional quantity of 350 production units called for under RFP No. F42600-88-R-0355. Both awards were made on January 17, 1989.

Northrop contends that ILI is not capable of properly manufacturing the gyros and that the Air Force's source approval procedures have been insufficient to properly qualify ILI. Specifically, Northrop alleges that the ILI data package was reviewed by General Dynamics Corporation, the F-16 prime contractor, and found to be insufficient for source approval. Northrop also argues that the tests to be done for purposes of ILI first article approval are less stringent than the testing required of Northrop for purposes of its source approval. Northrop specifically argues that the ILI gyro should be subjected to "safety of flight" testing as well as various "environmental tests" in addition to the more traditional "form, fit and function" testing associated with first article approval.

The Air Force responds that its engineers were satisfied with ILI's data package for purposes of initial approval and that it believes that the first article acceptance procedures will be adequate to establish specific production capability. The Air Force further states that the product will be fully qualified and tested including "safety of flight" testing during first article testing. The Air Force has also submitted to our Office a letter from ILI which shows that the firm is voluntarily subjecting its gyro to virtually all of the tests specified in the original specification and to which the Northrop gyro was subjected. Finally, the Air Force notes that ILI has produced a similar gyro for other aircraft and, thus, that the firm has manufacturing experience in this product area.

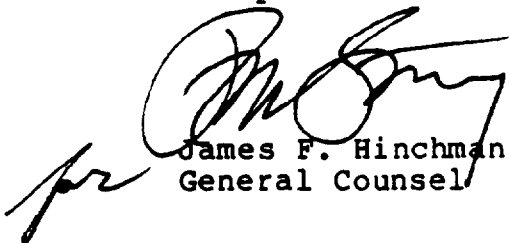
The contracting agency has the primary responsibility for determining its minimum needs and for determining whether an offered item will satisfy those needs since it is the agency that must bear the burden of difficulties incurred by reason

of a defective evaluation. Sony Corp. of America, 66 Comp. Gen. 286 (1987), 87-1 CPD ¶ 212. Consistent with this principle, the responsibility for establishing procedures necessary to determine product acceptability also rests with the contracting agency. See Ingersoll-Rand Co., B-224706; B-224849, Dec. 22, 1986, 86-2 CPD ¶ 701. In view of the agency's discretion to make such determinations, we will not question the agency's decision to accept a previously unapproved source's alternate offer in an approved source procurement unless the decision was tantamount to fraud or willful misconduct. Sony Corp. of America, B-225512, supra.

Here, we do not think that Northrop has demonstrated that the Air Force's determination to approve ILI, subject to first article testing, is tantamount to fraud or willful misconduct. As noted above, the agency's engineers have examined the technical data package of ILI and are satisfied as to the firm's ability to manufacture the gyros. In addition, ILI has agreed to, and is engaged in, subjecting its product to essentially all of the original specification's testing requirements and will be required to subject its product to "safety of flight" testing as part of its first article approval. Finally, ILI has previous experience in manufacturing similar devices.

The protester, in effect, in insisting on more rigorous testing procedures, seeks to eliminate what now appears to be its only competitor. We note, however, that consistent with the objective of our bid protest function to ensure full and open competition for government contracts, our Office generally will not review a protest that has the purpose or effect, whether explicit or implicit, of reducing competition to the benefit of the protester. Rhine Air, B-266907, July 29, 1987, 87-2 CPD ¶ 110; Ray Service Co., 64 Comp. Gen. 528 (1985), 85-1 CPD ¶ 582; Ingersoll-Rand Co., B-224706; B-224849, supra, 86-1 CPD ¶ 701.

The protest is denied.


James F. Hinchman
General Counsel